make time of the essence of the contract the vendor's letter of the 5th of April, 1949, did not have that effect and even if it had been intended to make time of the essence of the contract it would have failed to do so as fourteen days were too short a notice.

In this case it is clear that the plaintiff's letter of August 5th, 1957 did not say he could not complete but merely explained his difficulties in completing just on the day fixed and the letter could not therefore constitute the sort of improper conduct that would have entitled the defendant to send a notice to engraft time on the contract. It must also be observed that neither the letter of August 1st nor of August the 10th or September the 4th could or did make time of the essence of the contract for all that the defendant said was that the deposit was forfeited from failure to pay balance of the purchase price. No period was named in any of these letters making time of the essence except by reference to clause 2.

If I am wrong in this and the vendor is entitled to deliver an ultimatum to the purchaser, was the period of 14 days a reasonable notice having regard to the circumstances? On this point I most respectfully adopt the observations of Danckwarts J. in *Re Barr's Contract* [4] at page 857:

> "In naming a period which suddenly makes a definite requirement for completion and makes time of the essence in this way, regard must be had to all the circumstances of the case, and to the practical considerations of the ability of the purchaser in the circumstances to find the money, having regard to reasonable behaviour....."

In the present case at the time the agreement was entered into it was not known when the sub-division of the land would be completed and new titles issued. Notwithstanding this a very substantial amount was paid as initial deposit. The first intimation the purchaser received as to the issue of the new title was the defendant's letter of the 1st August, 1957, after a period of two years which also gave notice for the payment of the balance of the purchase money within 14 days. In the circumstances I do not consider that the period of 14 days is a reasonable period. The purchaser by his letter had already tendered the balance within the not unreasonable period of 6 weeks and now asks for specific performance. As the land is still in the name of the defendant there will be no injustice in ordering specific performance. There will, therefore, be an order for specific performance as prayed upon lodgment into Court by the plaintiff of $3,500 to the credit of this action within seven days. The defendant will pay the costs of the action.

Order accordingly.

Solicitors: *R. R. Chelliah; Bannon & Bailey.*

EVELYN SAW HEE LI v. GAN TIT SUN

[O.C.J. (Rigby J.) January 12, 1959]

[Penang, Summons in Chambers No. 239 of 1958 — Civil Suit No. 218 of 1958]

Landlord and Tenant — "Premises" definition of — Qua land does not come within the definition of "premises."

Practice and Procedure — Specially Indorsed Writ — R.S.C. 1957 O.3 r.6 and O.14 — Leave to defend — When granted.

This was an appeal from an Order of the learned Registrar giving the defendant (now the respondent) leave to defend proceedings brought against him by way of Specially Endorsed Writ dated September 11, 1958, under O. 3 r. 6 of the Rules of the Supreme Court.

The Statement of Claim endorsed upon the Writ was as follows: — "1. The plaintiff is the owner of the piece of land known as Lot 75 Town Subdivision 7 North East District, Penang. 2. The plaintiff is entitled to possession of the land forming part of the said land on which are erected premises known as No. 61, Green Lane, Penang. 3. The defendant was a trespasser or alternatively a licensee or in the further alternative formerly a monthly tenant of the plaintiff in respect of the said land. 4. A Notice to Quit dated 25th July, 1958 and expiring on the 31st day of August, 1958 was given by the plaintiff's Solicitors to the defendant and was served on the defendant on 26th July, 1958. Notwithstanding such Notice to Quit the defendant refuses to vacate the said land. And the plaintiff claims: — Possession of the said land."

On September 24, a Defence was filed in the following terms: — "1. Paragraph 1 of the Statement of Claim is admitted. 2. The defendant has been occupying a part of the plaintiff's on which his premises No. 61, Green Lane, Penang are erected for the past 29 years paying a ground rent first, at 50 cents per month and later at $1 per month. 3. With regard to paragraph 2 of the Statement of Claim the defendant denies that the plaintiff is entitled to possession of the said part of the said land as the defendant is a tenant to the plaintiff paying a ground rent of $1 per month. 4. The defendant denies that he is a trespasser or licensee in respect of the said land as alleged in paragraph 3 of the Statement of Claim and repeats that he is a tenant to the plaintiff in respect thereof. 5. The defendant admits paragraph 4 of the Statement of Claim and will contend that the Notice to Quit is bad in Law. 6. Alternatively, the defendant claims the protection of the Control of Rent Ordinance, 1956."

On September 27 the plaintiff (now the appellant) took out a Summons-in-Chambers under Order 14, returnable before the Registrar on October 2, 1958, applying for leave to sign final judgment. The Summons was

supported by the necessary affidavit, affirmed by the plaintiff, verifying the cause of action and stating that in her belief the defendant (now the respondent) had no defence to the action.

On September 30 the defendant filed an affidavit in reply in which he repeated his defence and contended that he was a tenant of the plaintiff, that the Notice to Quit was bad, and that he was protected under the Control of Rent Ordinance, 1956.

The matter came before the Registrar on October 2 and he made an Order giving leave to defend the action.

The issue for the consideration was whether the defendant, upon his written defence, has raised a triable issue which, on its merits, entitled him to be granted leave to defend.

Held: having regard to the definition of "premises" as now defined in the Control of Rent Ordinance, 1956, as a matter of law, the defendant was not protected under that Ordinance.

Case referred to:—

(1) *A.L.M.M. Muthukaruppan Chettiar v. Haji Ibrahim* (1941) M.L.J. 150.

ACTION FOR POSSESSION.

M. Knorpel for the plaintiff (appellant).

Lim Cheng Poh for the defendant (respondent).

Cur. Adv. Vult.

Rigby J. (after stating the facts as reproduced in the head notes, and continued): The argument before the learned Registrar was virtually the same argument as was repeated before me in somewhat greater detail. The issue for consideration was whether the defendant, upon his written defence, had raised a triable issue which, on its merits, entitled him to be granted leave to defend and this, in turn, resolved itself into the short but important question as to whether, as a matter of law, upon the facts pleaded by him he was entitled to avail himself of the protection of the Control of Rent Ordinance, 1956. Having regard to the definition of "premises" as now defined in the Control of Rent Ordinance, 1956, I had no doubt that, as a matter of law, the defendant was not protected under that Ordinance, although I was, and am, clearly of the opinion that he would have been so protected under the Control of Rent Ordinance, 1948, as amended by the 1949 amending Ordinance.

Section 12(1) of the 1956 Ordinance enacts that:—

"No order or judgment for the recovery of possession of any premises comprised in a tenancy shall be made or given....."

except in the cases therein specified. For a tenant, therefore, to claim the protection of the Ordinance he or she must first bring the subject matter of the tenancy within the definition of "premises comprised in a tenancy."

The word "premises" is defined in section 2 of the Ordinance. The relevant part of that definition reads:—

"Any dwelling-house, flat, factory.....and any part of any premises let or sub-let separately and includes any land.....occupied therewith."

Then follow certain exceptions which are irrelevant for consideration in this instance. It seems to me clear beyond argument that the words "includes any land.....occupied therewith" relate back to the earlier part of the definition and that land, as such, cannot come within that definition of "premises" unless it is land occupied with a dwelling-house, flat, etc. The decisions of McElwaine, C.J. in the case of *A.L.M.M. Muthukaruppan Chettiar v. Haji Ibrahim* [1] appears to me directly in point. Land is not "premises" within the meaning of this Ordinance. The plaintiff is not asking for an Order for the ejectment of her tenant from any premises. She is asking for the recovery of possession of a piece of land now in the occupation of the defendant. In my view, on the definition of "premises" as it now stands in the Control of Rent Ordinance, 1956, land, *qua* land, does not come within the definition of "premises," and therefore if a person chooses to take a lease of a piece of land and build a house on it, whether it be with or without the consent of the owner of the land, he cannot thereafter avail himself of the protection of this Ordinance as it now stands.

The position was clearly different under the Control of Rent Ordinance, 1948, as amended by the 1949 amending Ordinance. By that amending Ordinance "premises" were specifically defined to include "any land whereon any such building is or has been erected with the consent of the landlord." That definition has not been included in the 1956 Ordinance, although it is interesting to observe that it was, in fact, included in the Bill itself as published in the Supplement to the Federation of Malaya Gazette dated the 22nd September, 1955. Why this part of the definition was not included in the Ordinance itself must remain a matter of pure speculation. But it seems to me that the only inference that one is entitled to draw from its omission is that those responsible for its legislation came to the conclusion that it should be deliberately omitted. If that be so, it strengthens the argument that it was the deliberate intention of the legislature to revert to the position under the

1948 Ordinance and that land whereon buildings had been erected by a ground tenant, even with the consent of the landlord, should no longer be regarded as protected premises for the purposes of the Control of Rent Ordinance.

Mr. Lim Cheng Poh, for the defendant, drew my attention to section 12(1)(1) of the 1956 Ordinance, which reproduces in its entirety section 13(1)(1) of the repealed 1948 Ordinance. That sub-section provides that no order or judgment for the recovery of possession of any premises comprised in a tenancy shall be made or given except, *inter alia*, "where the premises when originally let consisted of vacant land, and there has since been erected thereon a building or buildings of a temporary character....." Mr. Lim Cheng Poh contended that that sub-section clearly contemplated that where vacant land had been let to a ground tenant who had subsequently erected thereon a building or buildings of a temporary character, then such buildings should be protected by the Control of Rent Ordinance and the landlord should not be entitled to recover possession of the land except in compliance with the prerequisite conditions set out in that sub-section. Having regard to the definition of "premises" as it now stands I do not profess to understand that sub-section. The only assumption that I can make is that when the legislature omitted from the final Ordinance that part of the Bill including in the definition of "premises," "any land whereon any such building is or has been erected with the consent of the landlord" that they also omitted to give effect to that exclusion by a consequential alteration or deletion of sub-section (1) as it now stands.

It was for these reasons that I allowed the appeal. In so allowing it I have not overlooked the fact that under O.14 it is sufficient for the defendant, in order to entitle him to defend the action, to raise a triable issue on its merits and that leave to defend ought to be given unless there is clearly no defence in law and no possibility of a real defence on a question of fact. There is, in my view, from the practical aspect an important point of law involved in this matter. But having regard to the view that I hold, and continue to hold, as to the point of law involved, there appeared to me to be no practical value in giving the defendant leave to defend, and I was of the opinion that the most expeditious manner in which to have the point of law determined was by way of an appeal against my decision. With that view, Mr. Lim Cheng Poh, for the defendant, concurred. I therefore granted a stay of execution pending appeal, conditional upon due prosecution of the appeal; such stay not to extend beyond the next sitting (in February, 1959) of the Court of Appeal in Penang.

Appeal allowed.

Solicitors: *H. E. P. Powell & Co.; Pillai, Lim, Lee & Hwang.*

REG. v. ISMAIL BIN MOHD. AMIN & ANOR.

[A.Cr.J. (Rose C.J.) January 28, 1959]

[Singapore — Magistrate's Appeal No. 255 of 1958]

Dangerous drugs — Act of revenue officer in the course of his duty — Burden of proof — Exception — Dangerous Drugs Ordinance (Cap. 137), ss. 36 and 48.

The first respondent, a revenue officer, was charged "that he on or about the 29th day of May, 1958 at about 8.15 p.m. in motor sampan No. SC 6875 at sea off Master Attendant's pier did have in his possession raw opium, to wit: 40 lbs. Gross, otherwise than under and in accordance with an authorisation such as is referred to sections 4 and 5 of the Dangerous Drugs Ordinance Cap. 137 or with a regulation made under section 7 of the said Ordinance contrary to and punishable under section 6 of the Dangerous Drugs Ordinance Cap. 137."

At the close of the prosecution evidence the respondents were acquitted without having been called upon for their defence. The learned District Judge who tried the case concluded his grounds of decision as follows:

"The prosecution proved a few minor points tending to raise suspicion against the 1st accused, but these were outweighed by the many material points shown in his favour. It is needless to say that mere suspicion is not enough to rebut the presumption of innocence in a criminal case, though it may well form the basis of a disciplinary enquiry against the officer.

"The prosecution therefore failed to establish a case against the 1st accused and it was the duty of the Court to acquit him forthwith. It was clearly shown that the 2nd accused was his informer at the time and as such, he also had to be acquitted on both charges without his defence being called."

From this decision the Public Prosecutor appealed.

Held: (1) it is clear from section 36 of the Dangerous Drugs Ordinance that the burden of proving the exception under section 48 rests upon the defence;

(2) if at the end of the prosecution case there were not sufficient facts to establish affirmatively that the exception under section 48 had been established, then the proper course is for the defendants to be called upon for their defence.

MAGISTRATE'S APPEAL.

A. W. Ghows (Crown Counsel) for the appellant.

G. Abisheganaden for the respondents.